

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SERENE ARIA HARKER,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MICHAEL JAY HARKER,

Respondent-Appellant,

and

AMANDA NICHOLE WARD,

Respondent.

UNPUBLISHED
September 6, 2007

No. 276670
St. Joseph Circuit Court
Family Division
LC No. 06-000317-NA

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(g) and (j). We affirm.

The trial court did not clearly err in finding the statutory ground in MCL 712A.19b(3)(j) established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 350-351, 353; 612 NW2d 407 (2000). During the pendency of the case, respondent-appellant was convicted of and jailed for a felonious assault involving the child's mother. Specifically, respondent attacked the child's mother with an axe while she was in a vehicle. Respondent admitted to having previously assaulted the child's mother, and the mother of respondent's other child testified that respondent had assaulted her several times during their relationship as well. Respondent also admitted to being bi-polar, but indicated he did not/would not take medication for his condition. Moreover, respondent did not visit the child at issue even when given the opportunity to do so. Because of respondent-appellant's long history of violence, including domestic violence against both of his children's mothers, safety concerns involving his grandparents (who had raised him and stated that he had a temper), and at least one violent incident during his recent incarceration, Serene was likely to suffer at least emotional harm in

respondent-appellant's care. Clear and convincing evidence supported termination of parental rights under subsection (j).

Respondent-appellant is correct, however, that the trial court erroneously also relied on MCL 712A.19b(3)(g) to terminate his parental rights, where only subsection (j) was charged in the termination petition. Issues not raised in the pleadings may be decided by a trial court only with the parties' consent. *City of Bronson v American States Insurance Company*, 215 Mich App 612, 619; 546 NW2d 702 (1996). However, clear and convincing evidence of only one ground is necessary to terminate parental rights. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000). Having found sufficient evidence under subsection (j), the error under (g) is harmless.

Concerning the best interests of the child, the trial court's findings were sufficient, *In re Gazella*, 264 Mich App 668, 678; 692 NW2d 708 (2005), and not clearly erroneous. MCL 712A.19b(5); *Trejo, supra* at 356-357. Respondent-appellant had no bond with Serene, who was ten months old at the time of the termination hearing. Respondent-appellant did not visit Serene when permitted and had not seen her since she was a newborn. She needed a stable, safe, permanent home, which respondent could not provide. Clear and convincing evidence supported the trial court's best interests ruling.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto